

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARCOS DELA CRUZ,

)

4:08CV3110

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Petitioner,

)

)

v.

)

**MEMORANDUM
AND ORDER**

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DENNIS BAKEWELL, Warden of
Nebraska State Penitentiary, and

)

)

ROBERT HOUSTON, Director of
Nebraska Department of Correctional
Services,

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Respondents.

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This matter is before the court on its own motion. On July 10, 2008, Respondents filed State Court Records. (Filing No. [7](#).) Thereafter, the parties filed briefs on the merits of the Petition. (Filing Nos. [11](#), [13](#), and [14](#).) Respondents argue that Petitioner's claims are procedurally defaulted because they were not raised in a post-conviction motion, however, the court cannot make that determination without certain state-court records which were not filed.

In the State Court Records before the court, Petitioner's appointed counsel requested time to file a motion for post-conviction relief. (Filing No. [7-2](#), Attach. 1, at CM/ECF pp. 36-38.) In addition, at that evidentiary hearing, the court requests briefs from the parties regarding their arguments. (Filing No. [7-8](#), Attach. 7, at CM/ECF pp. 36-38.) However, no motion for post-conviction relief or related briefing is included in the State Court Records. Therefore, Respondents must supplement the State Court Records in this matter.

IT IS THEREFORE ORDERED that:

1. No later than December 29, 2008, Respondents shall file a supplement

to the State Court Records. Such supplement shall include a copy of Petitioner's post-conviction motion filed in state court and all briefing relating to the state post-conviction motion provided to the state district court.

2. In the event that the requested documents do not exist or are missing, Respondents shall file a separate brief with the court explaining the efforts taken to locate the documents.

November 25, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge